IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4345 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRENIKKUMAR SANKALCHAND SHAH & 2 - Applicant(s)
Versus
KAUSHALYABEN BHAGATSINH DAMOR & 1 - Respondent(s)

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Appearance :
MR JV MEHTA for Applicant(s) : 1 - 3.
MR JR DAVE for Respondent(s) : 1,
Mr HL Jani, Addl.PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 17/04/2007

ORAL JUDGMENT

1. None present for the respondent except the learned APP.

2. The petitioners have invoked the provisions of section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") for praying to set aside the order dated 2.9.1998 of learned Metropolitan Magistrate below application Exh.6 in Criminal Case No.716/96. That application Exh.6 was made under section 239 of the Code for discharge. The criminal complaint appears to have been initiated by the complaint of respondent No.1 alleging offences punishable under sections 406 and 114 of Indian Penal Code, 1860 on the basis that the petitioners were entrusted with old ornaments of gold for the purpose of conversion to new ornaments and the petitioners were alleged to have failed in delivering new ornaments as agreed. The complaint was initially registered as an inquiry case and, after recording statement on oath of the complainant, it had come on record that the ornaments were alleged to have been entrusted to the petitioner on 15.9.1987 and not on 14.8.1995 as stated in the complaint. The application Exh.6 was, therefore, made by the petitioner for discharging them on the ground that

the complaint was barred by the provisions of limitation as prescribed in section 468 of the Code.

3. Learned Metropolitan Magistrate, Ahmedabad has, after consideration of the submissions of the parties, held in the impugned order that charge was framed on 1.10.1997 and documentary evidence was produced in support of the complaint. Pending cross examination of the complainant, the petitioners had made application Exh.6. In such circumstances and in view of the admitted mistake in mentioning the date in the complaint, the bar of limitation was not required to be invoked, particularly when the complainant was stated to have made several attempts at recovering the ornaments. The court relied upon judgment of the Supreme Court in ***State of Punjab v. Gurmit Singh (AIR 1996 SC 1393)*** and judgment of the Delhi High Court to hold that lodging of FIR could be late due to a variety of reasons, particularly reluctance of the prosecutrix or her family members to go to police and complain about the incident.

4. Learned counsel for the petitioner harped upon the provisions of Section 468 of the Code to submit that after the correct date of entrustment of the ornaments coming on record, the court ought not have proceeded further as no cognizance could have been taken. However, the opening part of provisions of section 468 clearly stipulates that bar of limitation is subject to the other provisions made in the Code. And the other provisions of section 473 of the Code opening with a non-obstante clause permits the court to take cognizance of the offence after expiry of the period of limitation, if it is satisfied and in the facts and circumstances of the case delay had been properly explained or that it was necessary to do so in the interest of justice. In the facts of the present case, the trial court appears to have clearly held that cognizance was required to be taken in the interest of justice and the court appears to be justified in taking that stand as, in any case, the date on which the complainant could have realised that the alleged offences were committed could not be exactly determined. Even otherwise, this court would not be

justified in interfering with the impugned order by virtue of the provisions of section 465 of the Code as no failure of justice is even alleged or found to have been occasioned by the impugned order. Therefore, the petition is dismissed, Rule is discharged and interim relief is vacated with an order to pay to respondent No.1, Rs. 3000/- by way of costs. Since the petition has been straightaway listed in the year 2007 after being admitted in the year 1998, the trial court shall now proceed with the further proceeding in accordance with law as expeditiously as practicable.

sd/-
[D. H. Waghela, J.]

msp